IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

ORDER.

(1) S.B. Civil Writ Petition No.4251/2005
M/s Girdhar Gas Service vs. Union of India & ors.

(2) S.B. Civil Writ Petition No.4252/2005
M/s Girdhar Gas Service vs. Union of India & ors.

(3) S.B. Civil Writ Petition No.4256/2005
M/s Girdhar Gas Service vs. Union of India & ors.

Under Article 226 of the Constitution of India.

Date of Order: October 26th,2005.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

Mr. Sanjeev Johri for the petitioner.

Mr. Vijay Bishnoi)
Mr. Sanjeev Pandya), for the respondents.

BY THE COURT:

Brief facts of the case are that the petitioner-firm has dealer-ship for L.P.G. Gas and according to the petitioner, the petitioner has experience of 20 years in the same field. The petitioner with his this experience applied for getting the franchisees for BSNL services which allows the person to deal in the cellular, basic, W.L.L., Internet, I.T.C. Cards etc. on behalf of the BSNL. According to the petitioner, for the purpose of awarding this franchisees, there is a procedure prescribed

and in that process the marks are awarded under different heads on the basis of the qualification of the applicant for the said franchisees. According to the petitioner, in the case of awarding of franchisees by the BSNL for the Nagaur area, franchisees has been awarded to respondent no.4 by ignoring the procedure laid down in the procedure as provided by the BSNL. According to the learned counsel for the petitioner, the eligibility criteria is given in the notice inviting EOI (Expression of Interest) for BSNL franchisees . As per sub-clause (iv) of eligibility criteria 1, the applicant should have space raising 200 sq.ft. If it is for Jaipur and if it is SSA then the applicant should have 150 sq.ft. of the land with him. In sub-clause (v) of clause 1 of the said notice inviting EOI, it is clearly mentioned that the land should be in commercial area with sufficient parking space and it should be on ground floor only, on main road or clearly visible from main road. It also provides that lay out and location to be submitted by the applicant along with EOI. In addition to above, in column no.3.2.5 the time limit is also given for the possession of the land which is 7 days from the letter of intent to be submitted by the applicant. As per clause 6 of the notice inviting EOI, the marks can be awarded 35% for experience, 35% for size of the showroom(carpet area) and 30% on the basis of the turn over of the applicant. In S.B.Civil Writ Petition No.4251/2005, the applicant was not having the land with him till the letter of intent was issued to

respondent no.4. According to the petitioner, respondent no.4 obtained the premises only on 3.6.2005 which is apparent from the copy of the rent deed produced by the petitioner as Ex.8. Therefore, he has been wrongly awarded 35% marks on the basis of having the location with the respondent no.4. The petitioner further submitted that the petitioner since was dealing in the fast moving consumer products and also possessing the premises required for establishing the business of franchisees of the BSNL which is clear from Ex.2 dated 7.3.2005, therefore, the respondents wrongly rejected the petitioner's application for the franchisees in question.

The petitioner also submitted that the respondent arbitrarily awarded the contract to respondent no.4 because that was blue-eyed firm of the respondent-BSNL. To substantiate, the petitioner submitted that the respondent-firm alone has been given five franchisees for five areas and further the respondents have given seven franchisees to the M/s Steel India, Jaipur and seven franchisees to M/s Bharati Telcom, Jaipur.

The learned counsel for the respondents-BSNL as well as appearing on behalf of the selection committee vehemently submitted that it is apparently clear from the documents placed on record by the

petitioner (Ex.1) that process of selection of dealer-ship was made absolutely transparent and it was made known to all persons so that large number of persons may apply for getting the franchisees from BSNL. Therefore, there is no chance of any manipulation in the mater of awarding the contract of franchisees of the BSNL. It is submitted that the petitioner was not eligible for award of this contract as the petitioner is not dealing in the FMCG product, which is the basic requirement under sub-clause (iii) of the eligibility criteria as provided in the notice inviting EOI. The petitioner is admittedly, not dealing in the Electronic/Electrical goods, therefore, there arises no question of having experience of dealing in such goods for two years by the petitioner, as the petitioner applied for the SSA's area. According to the learned counsel for the respondent-BSNL, the selection committee carefully after taking help of the expert in the field defined the FMCG (fast moving consumer goods) products and prepared a list showing the business which can be treated as fast moving consumer goods product business. Copy of this list is placed on record as Annexure R/1. It is not in dispute that the petitioner is not doing any of the business as mentioned in Annexure R/1. Since the FMCG products have been worked out by the expert committee, therefore, this Court may not like to re-examine whether the experts have committed any mistake by not including the business of the L.P.G. in the FMCG products list. Since the

petitioner was not eligible, therefore, he was not even eligible to compete with the respondent so as to seek any marks for any of his eligibility, may it be on the ground of any business with him. It is also submitted that the condition no.3.2.5 only provides that the applicant should ensure about the place within seven days of receipt of letter of intent and the notice inviting EOI nowhere provides that the applicant must have the land in his possession at the time of submitting his intention to submit the franchisees-ship. The learned counsel for the respondents-BSNL further submitted that even in the application form for submitting for tender, there is a column which provides that the applicant should disclose the land if it is in his possession or he may show that he will acquire the land within such and such time. This also suggests that having the premises with the applicant at the time of submitting the application in pursuance of the notice inviting EOI is not the required condition.

The learned counsel for the private respondent submitted that the writ petition is not maintainable in view of the additional fact that the petitioner has withdrawn the earnest money by encashing cheques which were sent to the petitioner by the BSNL and these cheques have been encashed by the petitioner after filing the writ petition. In addition to above, the learned counsel for the respondents submits that

this is a commercial and contractual matter and, therefore, the court may not interfere in the award of the contract. The learned counsel for the private respondent also relied upon several judgments in support of his arguments.

The above are the facts of S.B.Civil Writ Petition NO.4251/2005, whereas in S.B.Civil Writ Petition Nos.4252/2005 and 4256/2005, the ground to challenge the award of franchisees is only that the private respondent has been awarded marks against the quota of handicapped persons whereas only one of the partners of the firm is a handicapped person, therefore, the respondents have committed illegality in awarding marks to the private respondent under the category of handicapped persons.

For these S.B.Civil Writ Petition Nos.4252/2005 and 4256/2005, the learned counsel for the respondent vehemently submitted that the petitioner since is not eligible for award of the contract and admittedly one of the partners of the respondent-firm is a handicapped person and even if for the sake of arguments it is admitted that those marks could not have been awarded to the respondent-firm even then the petitioner cannot get the dealership which has been granted to the respondent and the respondents have started their business under the contract.

I considered the submissions of the learned counsel for the parties and perused the relevant documents. It is clear from Annexure R/1 placed on record by the respondent-BSNL that the expert body defined FMCG products and in the list of business as given in Annexure R/1, the business of L.P.G. Is not included. The petitioner has no other claim of eligibility under sub-clause (iii) of clause 1 of the eligibility criteria provided in the notice inviting EOI. The learned counsel for the respondents has also shown the office order dated 7.4.2005 by which the tender evaluating committee was constituted and the minutes of the meeting held on 4.5.2005 wherein the matter of definition and range of FMCG was considered and whereby the decision was taken by the FMCG products. These documents which are placed on record during course of arguments clearly reveal that the due process was followed for preparing the list of FMCG products and the petitioner is admittedly not falling in the eligibility criteria for the franchisees, therefore, the writ petitions of the petitioner deserve to be dismissed only on this ground.

The learned counsel for the petitioner relied upon the judgment of the Hon'ble Apex Court delivered in the case of District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and another vs. M.Tripura Sundari Devi ((1990) 3 SCC 655), which is the decision given in a service law matter and in that case

the controversy was entirely different, hence the said judgment has no relevance in the fact of this case.

The learned counsel for the petitioner further relied upon the judgment of the Hon'ble Apex Court delivered in the case of Tata Cellular vs. Union of India ((1994) 6 SCC 651), wherein Hon'ble the Apex Court held that the court cannot interfere with the Government's freedom of contract, invitation of tender and refusal of any tender which pertain to policy matter, but whether the decision/action is vitiated by arbitrariness, unfairness, illegality, irrationality or 'Wednesbury unreasonableness' i.e. when decision is such as no reasonable person on proper application of mind could take or procedural impropriety, can be looked into by the court. Hon'ble the Apex Court held that test is whether wrong is of such a nature as to require intervention and at the same time, laid down that the court would not substitute its own opinion for that of expert.

The petitioner failed to lay down any foundation for arbitrariness, unfairness, illegality, irregularity etc. in the matter of taking decision by the respondents in awarding franchisees to the private respondent. Mere award of contract in number five or seven to one party in the State of Rajasthan itself cannot be a reason to draw an inference that the

contract was awarded to the parties because they were blue-eyed parties of the BSNL. At this stage, it will be relevant to mention here that the petitioner itself applied for three franchisees within the Rajasthan and, therefore, the petitioner itself tried to obtain three contract and after failing in that has challenged the action of the respondents on the ground that five contracts have been given to one of the party. In view of the above, the judgment of the Hon'ble Apex Court delivered in the case of Tata Cellular(supra) is also of no help to the petitioner.

The learned counsel for the petitioner also relied upon the judgment of the Hon'ble Apex Court delivered in the case of :Monarch Infrastructure (P) Ltd. Commissioner, Ulhasnagar Municipal Corporation and others ((2000) 5 SCCC 287) but the facts of the said case are entirely different and as held above, the petitioner failed to lay down the foundation for challenging the action of the respondents on the ground of undue favour to the private respondent, therefore, I do not find any substance in all the three writ petitions.

Consequently, all these writ petitions are hereby dismissed.

(PRAKASH TATIA),J.

mlt.